

Defending Abortion Rights: Case Studies and Theoretical Analysis in Post-Dobbs America

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Abstract. After the implement of Supreme court judgement decision in the the Dobbs v Jackson Women's Health Organization, the controversy over women's right to abortion has reached a new climax. Owing to the practical trendy of abandon and time constraint of the development , there are few article analysis supporting the maintenance of abortion right. However, the majority of Americans express subjective supports for the abortion right in online comments and spontaneous events. With such a unmatched situation, this paper stand out from the distinctly agreement standpoint about the females right and in contrast to the previous papers, using case study, theoretical analysis and literature research to arrange the development of the Abortion history and evidences for the abortion right in America. Overall, the writing not only enrich the literature supplements about the approval analysis under the currently uncertain unsharpness in policy setting environment but also point out the guidance for typical feminist movements in practice.

Keywords: Abortion; bodily autonomy; privacy right.

1. Introduction

On June 24, 2022, the U.S. Supreme Court issued its decision in Dobbs v. Jackson Women'Health Organization, which overturning the foundational and convincing cases of Roe v. Wade and Planned Parenthood v. Casey [1]. The judgement has been overwhelmingly dismantled previous protecting the constitutional right to abortion in the United States. After the publication of the judgement, 13 states currently ban or have nearly banned abortion with narrow exceptions [1]. With such a trendily explicit execution, the flexible right of accession to medical abortion treatments demanded by women was severely being threaten nationwide, which even brought influences to the neutral and opposite standpoint states.

However, according to a 2022 report from the Commonwealth Institute, in the states be they Texas, Missouri, and Kentucky aimed as protections of fetus, the exact data showed that the type of strict abandons in abortion oppositely lead to higher rates of mortality and infant death than abortion-permissive states. Under the uncertain policy environment, this paper holds a clear viewpoint that abortion right is supposed be given to America women. In the following paragraph, this paper will first sort out analyses and judgment of the milestones results on the issues of abortion in the United States based on the clue of time, and then support the views of this paper from the main arguments of gender equality and body autonomy derived from reproductive rights and medical confidentiality in privacy right. Finally, giving out the summary about the American abortion based on the writing of the essay.

2. Typical Cases

2.1. Roe vs Wade (1973)

A pregnant woman who was petite and slim called Norma McCorvey wanted the pregnancy aborted because she was divorced and did not have any family support and herself was destitute. However, under Texas legal system, there is a statute that makes it illegal to perform abortions unless a woman's life is in danger, with the only extraordinary legal reason for an abortion being to save the mother's life. Consequently, the women cannot find the doctor to do her abortion operation.

The women frustrated by her lack of legal choices, decided to challenge the validity of Texas' draconian abortion regulations, claiming that they violated her right to privacy and personal liberty under the United States Constitution. In her lawsuit, Roe alleged that the state laws were unconstitutionally vague and abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments [2]. Siding with Roe, the Supreme court struck down the Texas law. In its ruling, the court recognized for the first time that the constitutional right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" [3].

Noticeably, the main issue in the case was whether the right to abortion involves a citizen's right to privacy or not. To be more specific, focusing on the issue about whether the reproductive right is subject to the right to privacy, the opposition emphasizes the right to life of the fetus, arguing that life begins at the moment of conception, and therefore the government has a responsibility to protect the right to life of the unborn child. However, the majority opinion held that "although the Constitution does not explicitly mention the right to privacy, it does not mean that the Constitution does not protect the right to privacy, and in different cases, the court has ruled in the first, fourth and Fifth Amendments, the shadow area of the Bill of Rights, the Ninth Amendment, and the third Amendment" [2]. In other words, the root of this abortion right is found in the "freedom" of the fourteenth amendment. To conclude, the majority opinion held that the right to abortion is an important part of the right to privacy and is protected by the Due Process Clause of the Fourteenth Amendment to the Constitution.

In order to clear the boundary between the permission and the illegal abortion, later, the supreme court had proclaimed an explicit regulation. The stipulation divides the pregnant process into three main trimesters. In particular, the state cannot impose restrictions on abortion choices made during the first trimester of pregnancy. The state may impose restrictions on abortion in the second trimester if they are logically related to the health of the mother. When the fetus achieves "viability" in the third trimester, a state may regulate abortions or forbid them completely. Roe has come to be known as the case that legalized abortion nationwide [1]. With the Act, the court deemed these limitations illegal, making abortion treatments safer and more accessible to women across the country. Meanwhile, the debate over a woman's right to abortion continues. The case Roe v. Wade is not only a victory of the feminist movement, but also a starting point about a deep reflection and discussion of complex moral ethics in American society.

2.2. Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)

Although the Roe Case established a legal protection mechanism for women's reproductive rights, there are still deficiencies in the established abortion legal system, which inspired a lasting movement debate and deep social inequality. The case Planned parenthood vs Casey makes a further explanation about structured abortion in America.

In 1989, Pennsylvania passed a law requiring any woman seeking an abortion to wait 24 hours after contacting a clinic, receive a lecture on fetal development and alternatives to abortion, and obtain written proof that if a minor desired an abortion, she could not have one. Consent must be acquired from a parent (or a judge), and married women must notify their spouse. The district court ruled that each of Pennsylvania's laws was unconstitutional. As a result, the case goes to the Court of Appeal. Facing the case, the joint opinion relied heavily on the doctrine of stare decisis. The court specifically make the following judgements. Firstly, make recognition that the freedom of the woman to decide whether to have an abortion prior to viability and to do so without undue government intervention. Secondly, make reaffirmation that the State's ability to impose restrictions on abortion after fetal viability, provided that the law makes an exception for pregnancies in which the woman's life or health is in risk. Lastly, make confirmation that the idea that the state has legitimate interests from the commencement of the pregnancy in preserving the woman's health and the life of the fetus that may become a child.

The supreme court discarded the strict scrutiny standard of review prescribed in Roe in favor of the more permissive "undue burden" standard [4]. To be more specific, undue burden is that any

statute is invalid with the purpose of putting a significant impediment in the way of a woman seeking an abortion of a nonviable fetus. With the core decision, it is to say that the case further clarified the boundaries of legal abortion rights based on the case of *Roe vs Wade*, marking a milestone in the legal reproductive autonomy of women in the United States.

2.3. Dobbs v. Jackson Women's Health Organization

The case concerned the legality of a Mississippi legislation called Gestational Age Act that prohibits abortion beyond 15 weeks of pregnancy. The Jackson Women's Health Organization, the only abortion clinic in Mississippi, challenging the constitutionality of the law faced the state's passage of the Abortion law. The organization supposes that the bill violates established Supreme Court precedent on women's reproductive rights, particularly the principles about time boundary established in *Roe v Wade*.

Surprisingly, the personal appeal eventually caused the domestic reverse. After 50 years of precedent safeguarding the constitutional right to an abortion in the United States, the U.S. Supreme Court extremely overturned *Roe v. Wade* and *Planned Parenthood v. Casey* in its decision in *Dobbs v. Jackson Women's Health Organization* on June 24, 2022. Noticeably, it is three factors that contributed to the Supreme Court's decision.

To commence, the trimester framework created by the *Roe* Court was without support from constitutional text, precedent, history, or any of the parties and the amici [5]. Specifically, the Fourteenth Amendment to the Constitution does provide protection for some unlisted rights, but any rights protected under the clause must be "States" and "part of well-ordered liberty" [1]. Clearly, the right to abortion is not what the Constitution is supposed to protect. Additionally, the reliance interests on the decisions of *Roe* and *Casey* are not capable of being measured [5]. Because the Court was unable to thoroughly examine the intangible reliance interests, the judgment should be returned to the legislative bodies of the states, allowing individuals to influence the legislative process and ensure that their interests were reflected.

Following the verdict, states hurried to restrict abortion access, and the legal landscape became disorderly as abortion rights changed on a daily basis. The case of *Dobbs v. Jackson Women's Health Organization* makes the difference in abortion laws between states in the United States further increase, so the legality of female abortion rights has become a hot social issue of justice under the current situation.

Facing this uncertain legal environment, the author believes that women's abortion rights are legal and just. Therefore, the part three will demonstrate the legal existence of female abortion rights from the two aspects of female reproductive rights and privacy respectively.

3. The Define of Reproductive Right

Obliviously, the need for an abortion policy can be justified on the ground that our right to reproductive freedom necessitates that woman should have access to it [6].

As early as the 1870s, Ezra Heywood, a feminist advocate of birth control, asserted that "the natural right of a woman to own and control her own body--a right inseparable from her intellectual existence (Heywood)". Specifically, focusing on the abortion issues, the legal reproductive right that approximately co-related with their decisional autonomy, bodily integrity, gender equality and health is called reproductive right, which make insurances about women's legitimate rights without any infringements upon. To break it down, female reproductive rights contain both active and passive connotations. Regarding to the active rights, that rights are a privilege (or freedom) of women, that is, women can freely make reproductive decisions and behaviors, and women do not have any obligation to make reproductions. Regarding to the passive rights, the rights require that others cannot interfere, that they have the right not to be disturbed when exercising their rights, and that others cannot use their power to control the actions of the right owners, that they cannot force women to make reproductive decisions, and that they cannot use their own owners' bodies without consent.

Next, this paper will explain the necessity of the legal existence of abortion right from the perspective of two specific reproductive rights: bodily autonomy and gender equality.

3.1. Bodily Autonomy

Reproductive autonomy is an autonomous right subordinate to body autonomy. If from the surface to the inside of the lifting plane, to commence, autonomy is an individual's right to make choices and exercise control over their lives [7]. From this broad definition to focus on the bodily autonomy as it relates to abortion, it refers to the fundamental right to have control over one's own body, make choices about their physical appearance and establish their social presence, especially women [8]. Thus, for legal abortion, reproductive autonomy is a more sexual branch of bodily autonomy. "Whether to have children, when to have them, and when approaching the topic of health through an intersectional lens [9]." It appears that having control over one's body is a natural human right.

Admittedly, there are the typical type of citizens that forced to deprived of their autonomy rights. As "the state's interests always outweigh the rights of the individual [9]." In other world, the autonomy can be taken away when the use of authority violates the interests of the state. It is a declaration that cannot deny overriding the autonomy right. Criminals who break the law, for example, need to be imprisoned by the government almost all the time with expropriation of the right because they have touched the interests of the larger state concerned. With the discussed above, a woman's right to abortion does not involve a higher level of infringement.

At the same time, most scholars who oppose the legal right to abortion argue according to the right to life of the fetus, holding that life begins at the moment of conception, and therefore the government has a responsibility to protect the right to life of the fetus and unborn child. However, it is reported that an unwanted pregnancy caused by violence, is one of the adverse childhood experiences that can have long-lasting, negative effects on health, well-being, life opportunities, and physical consequences [10]. By which it means that the repeal of the abortion damage not only to the mother, but also to the child and the family. Consequently, bodily autonomy is one of the most important criteria derived from reproductive right to prove the rationality of female abortion.

3.2. Gender Equality

To commence, gender equality means that all genders are free to pursue whatever career, lifestyle choice, and abilities they want without discrimination [11]. In short, gender equality means that people's rights, prospects, and access to society are all the same regardless of gender. And the conception also set as profound evidence to justify the legislation of abortion in the respect of reproduction right. In this section, the discussion analysis the significance of abortion in the fight for gender equality, with employment as the main core metric.

Throughout ancient Greece and Rome's long history, women were mainly relegated to the duty of family reproduction and were frequently considered as male appendages. Their living environment was primarily limited to the family's four walls, and they had little opportunity to demonstrate their abilities and strength in the social and public spheres. Such bias and job restrictions not only deny women opportunities for advancement in society and the public domain, but also exacerbate their political, economic, and social inequalities. Unfortunately, this order of social development has continued into modern times. According to Sophie, self-employed mothers spend more time on domestic work and childcare and their paid work hours are shorter than those of salaried mothers, whereas the fathers' time does not vary much across employment types [12].

The root cause for this pervasive phenomenon is the restriction on abortion. To be more specific, without reproductive control, women were faced unplanned pregnancies, which limit their ability to participate fully in the workforce. Consequently, physically as well as psychologically, women are always unconsciously in a weak position in the dialogue due to similar uncertainties. To a certain extent, it has exacerbated gender inequality and violated women's right to independent reproduction.

To put it into a nutshell, the existence of abortion right is the essence of reproductive right.

3.2.1 The define of Privacy right

For the respective of the privacy right, it is a convincing evidence that prove the legal existence of female abortion right.

To begin with, from the historical origin of privacy, in the first article of the Fourteenth Amendment to the United States Constitution, the specific content states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law [13]." To be more specific, the clause requires the United States and the States to fully respect civil rights, including the right to liberty, which includes an individual's right to privacy. In short, privacy right encompasses several key aspects, be they freedom from intrusion, control over personal information and protection against publicity [14]. Consequently, the author will expound the evidences from the direction that is the confidentiality in medical care from the aspect of control over personal information to explain the rationality of abortion.

3.2.2 Confidentiality in medical care

To commence, from a medical point of view, abortion is the process by which a patient seeks a doctor to restore his or her body to its natural or normal state, usually through drugs or medical procedures [15]. The demarcation has been proved that abortion is a service justify people's legal right based on privacy right in the respect of freedom from intrusion, which can also be served as a powerful nomological evidence to justify the justice of the right.

Specifically, according to the above understanding of abortion, it is simply the process of women seeking medical treatment. As a result, it can be inferred that the right to make independent decision about abortion should be subject to the protection of the right to privacy because of the feature of freedom from intrusion, and the decision about abortion should be discussed between the patients that are pregnant women, and the health care providers and the relevant health care workers. The paper takes confidentiality principle in medical care in China called patient privacy as an example. Some concrete statutes such as:

(1) For personal information, medical institutions and their medical staff are still obliged to keep confidential [16].

(2) The act of medical treatment itself belongs to the scope of privacy, such as registration, examination, surgery, etc. [16].

Therefore, there is in the law a notion of the inviolability of patient secrets, which means privacy in the medical process is only known and determined by the two parties directly involved in the medical process without infringement of national interests.

4. Conclusion

In the 21st century, the powerful anti-abortion movement in the United States eventually prompted the Supreme Court to deny American women's right to abortion protected by the federal Constitution. Looking back on more than 50 years of debate and development on the right to abortion, despite the current legal environment that protects the interests of the fetus and uncertain settle finally about unified state law making, this article still supposes that it is more reasonable to support the right to abortion.

The paper firstly uses the methodology called case study to tease the main clue of the historical events in the American abortion history. Then, theoretical analysis and literature research method based on the field of law and sociology are utilized in the process of justification of abortive legitimacy in order to prove the writer's position.

To put it into a nutshell, the significance of the writing provides some actionable insights and frameworks for policy makers. However, the arguments in this paper still have a certain subjective color and biases, emphasizing the need for further neutral opinion expression and some refutations of opposing arguments. And the mentioned content can be added in further writings.

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